

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

UNITED STATES OF AMERICA,	.	CASE NO. 3:23-CR-029-29
PLAINTIFF,	.	
V.	.	GALVESTON, TEXAS
PATSAMONG SOMKONGMANY,	.	WEDNESDAY, APRIL 3, 2024
DEFENDANT.	.	12:50 P.M. TO 01:45 P.M.
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DETENTION HEARING

BEFORE THE HONORABLE ANDREW M. EDISON  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES: SEE NEXT PAGE

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## **DETENTION HEARING**

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## Appearances:

**For the GOVERNMENT:**

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1                   Galveston, Texas; Wednesday, April 3, 2024; 12:50 p.m.

2                   **(Official Interpreter Present.)**

3                   **UNITED STATES MARSHAL:** All rise.

4                   **THE COURT:** Please be seated.

5                   **(Pause in the proceeding.)**

6                   **THE COURT:** Okay. We are here on Case 3:23-CR-29-29,

7                   *United States versus Patsamong Somkongmany.*

8                   Who do we have for the Government, please?

9                   **MR. CUSICK:** Kenneth Cusick.

10                  **MR. MACIAS:** Alejandro Macias for Mr. Somkongmany.

11                  **THE COURT:** Good to see you. And good to see  
12 you -- is it Somkongmany?

13                  **DEFENDANT SOMKIONGMANY:** Yes, pretty close, yes.

14                  **THE COURT:** How do I pronounce it?

15                  **DEFENDANT SOMKIONGMANY:** Somkongmany.

16                  **THE COURT:** Somkongmany. Okay.

17                  Good to see you, sir. Obviously, we're here for a  
18 detention hearing. You've seen how the detention hearings  
19 work. So you know how it works.

20                  Are we ready to proceed?

21                  **MR. CUSICK:** Yes, your Honor.

22                  **MR. MACIAS:** Yes.

23                  **THE COURT:** And let me guess, Mr. Emerson is going to  
24 be the -- the witness?

25                  **MR. CUSICK:** Yes, sir.

1                   **THE COURT:** If you would make the proffer, I would  
2 appreciate it. And just so the record is clear, I have  
3 reviewed and read Exhibit 1, which is the Pretrial Report. And  
4 that will be Exhibit 1 to this hearing and this hearing only.

5                   With that said and done, I will let you proceed.

6                   **MR. CUSICK:** Thank you, your Honor.

7                   Proffer made, DEA Task Force Officer James Emerson  
8 for this Defendant will be that --

9                   **(Pause in the proceeding.)**

10                  **MR. CUSICK:** Agent Emerson believes --

11                  **(Telephonic announcement.)**

12                  **MR. CUSICK:** -- believes in his -- in his opinion  
13 that the Defendant will be a risk of flight and danger to the  
14 community. Primarily, the danger to the community, based on  
15 the circumstances of the investigation and criminal history of  
16 this Defendant.

17                  Agent Emerson will testify that during the  
18 investigation of the case, he was the case agent and he -- that  
19 Mr. Somkongmany was encountered a couple of times when  
20 transactions that occurred in September of 2019. In  
21 particular, it involved the delivery of fentanyl pills from  
22 Dallas to Houston, Texas.

23                  That during September of 2019, that there was a  
24 confidential source for the DEA and negotiated the purchase of  
25 30,000 fentanyl pills from a trafficker of unknown identity,

1 but -- and a person name of Juan Pelon (phonetic) in Mexico,  
2 which was brokered by Roque Zamudio-Mendoza, the Defendant  
3 Number 1 in this indictment.

4                   **(Pause in the proceeding.)**

5                   **MR. CUSICK:** Juan Pelon sent Southanome  
6 Frichithavong, who's a co-Defendant in this case, and Patsamong  
7 Somkongmany from Dallas, Texas to deliver the 30,000  
8 pills -- fentanyl pills to the confidential source in Houston.

9                   On September the 20<sup>th</sup>, 2019, Mr. Frichithavong  
10 contacted the confidential source and advised that he arrived  
11 in -- had arrived in Houston with the 30,000 fentanyl pills.

12                  DEA undercover officers met with Mr. Frichithavong  
13 and also Mr. Somkongmany at the Doneraki (phonetic) Restaurant,  
14 300 Gulf Gate Mall, Houston, Texas, and obtained a sample of  
15 the fentanyl pills, which was a plastic bag containing five  
16 fentanyl pills.

17                  After that transaction, the confidential source  
18 negotiated the purchase of the full 30,000 fentanyl pills from  
19 the unidentified contact in Mexico, U.N.3516 for \$270,000. And  
20 it was determined that the -- that transaction would occur in  
21 two parts; 19,000 and 11,000 fentanyl pills.

22                  Mr. Frichithavong then contacted the confidential  
23 source and sent multiple photographs and a personalized video  
24 depicting the 19,000 fentanyl pills in his possession.

25                   **(Pause in the proceeding.)**

1                   **MR. CUSICK:** We believe the --

2                   **(Voices whispering.)**

3                   **MR. CUSICK:** -- none of the drugs were seized on that  
4 occasion. But there was a court-authorized wiretap in --

5                   **(Pause in the proceeding.)**

6                   **(Voices whispering.)**

7                   **MR. CUSICK:** Correct, myself, your Honor.

8                   There was -- this was not a result of the court-  
9 authorized wiretap going on at that time. This was just based  
10 on conversation with the confidential source. And the only  
11 fentanyl seized in this occasion were the five fentanyl pills  
12 as a sample, which were -- were tested and -- confirmed to have  
13 been fentanyl.

14                  But the -- the 30,000 pills to be later delivered  
15 were not. And that's it, your Honor.

16                  And I would tender to Mr. Macias here is a copy of  
17 the proffer from the agent.

18                  **MR. MACIAS:** Thank you.

19                  **MR. CUSICK:** Thank you.

20                  **THE COURT:** Make sure I understand. What timeframe  
21 was this?

22                  **MR. CUSICK:** September of 2019, your Honor.

23                  **THE COURT:** Okay.

24                  **(Pause in the proceeding.)**

25                  **THE COURT:** Oh, waiting for someone to do some.

EMERSON - CROSS

5

1                   Agent Emerson, if you could come up to the witness  
2 stand, please.

3                   **(Pause in the proceeding.)**

4                   **THE COURT:** Raise your right hand.

5                   **(Witness sworn.)**

6                   **THE COURT:** Okay. You heard the proffer that was  
7 made by Mr. Cusick. Do you adopt that proffer as your  
8 testimony here today under penalty of perjury?

9                   **THE WITNESS:** Yes, sir. I do.

10                  **THE COURT:** I turn it over to you --

11                  **MR. MACIAS:** Thank you, your Honor.

12                  **THE COURT:** -- Mr. Macias.

13                   **CROSS EXAMINATION**

14                  **BY MR. MACIAS:**

15 Q                Agent Emerson, my name is Alejandro Macias. I represent  
16 Mr. Somkongmany. I'm going to ask you a few questions.

17 A               Yes.

18 Q               I've -- I've received the proffer and heard it  
19 from -- from Mr. Cusick. So just a couple of things I want  
20 to -- I want to ask you.

21                 Number one, there's mention of conversation with a  
22 confidential source from Mr. -- I'm going to -- the co-  
23 Defendant, the other --

24 A               Yes.

25 Q               The other Laotian co-Defendant.

EMERSON - CROSS

6

1 A Mr. Frichithavong.

2 Q Frichithavong.

3 Also, sending of some texts by Mr. Frichithavong.

4 A Phone calls, texts, and a video --

5 Q Okay.

6 A -- messages.

7 Q And those -- those came from Mr. Frichithavong to the  
8 confidential source?

9 A Yes.

10 Q Okay. And -- but there were none from Mr. Somkongmany,  
11 correct?

12 A Correct. None.

13 Q Okay. Well I'll just cut down to it.

14 Besides his mere presence, did Mr. Somkongmany do  
15 anything to facilitate this drug transaction?

16 A He's the one that physically handed the pills to the  
17 undercover officer.

18 Q The -- the five pills.

19 A Correct.

20 Q Okay. So this happened in a restaurant in 2019.

21 A In the parking lot.

22 It was -- I was one of the undercover officers. I  
23 was present. And then there was another undercover officer  
24 that actually received it in the parking lot from  
25 Mr. Somkongmany.

EMERSON - CROSS

7

1 Q But what law enforcement agencies besides DEA were  
2 involved?

3 A Houston Police Department and Galveston Police Department  
4 were present.

5 (Pause in the proceeding.)

6 BY MR. MACIAS:

7 Q And Galveston?

8 A Correct.

9 Q Was there any video recovered of this transaction?

10 A I believe there are photographs. I don't know if there's  
11 a video. But photographs of the transaction took place. And  
12 obviously, the undercover officer was who received it.

13 Q Okay. Was photographs from what agency?

14 A DEA. I don't know what agency.

15 Q Okay.

16 A Law enforcement.

17 Q Okay. So I -- I apologize. I'm trying to -- I'm trying  
18 to just cut it down.

19 Were there officers from the HPD taking the photos?  
20 Or officers from Galveston?

21 A Well it's, you know, we're a task force, which is  
22 comprised of, you know, at the time there is maybe eight  
23 different agencies. Right now I think we're at 15 agencies.

24 But it was law enforcement that's working with DEA.

25 Q Okay.

EMERSON - CROSS

8

1                   **(Pause in the proceeding.)**

2 **BY MR. MACIAS:**

3 Q       And do -- and you reviewed these photographs?

4 A       Yes.

5 Q       And do they show Mr. Somkongmany actually delivering the  
6 pills?

7 A       Yes. And I was -- I was the other undercover officer. So  
8 I physically witnessed him deliver the pills.

9                   **(Pause in the proceeding.)**

10 **BY MR. MACIAS:**

11 Q       Okay. And --

12                   **(Pause in the proceeding.)**

13 **BY MR. MACIAS:**

14 Q       That was back in 2019, correct?

15 A       Yes.

16 Q       Since this is 2019, do you have information that  
17 Mr. Somkongmany was involved in any fentanyl transactions?

18 A       No, sir.

19                   **(Pause in the proceeding.)**

20 **BY MR. MACIAS:**

21 Q       Now, when Mr. Somkongmany was arrested, were you present?

22 A       No, sir.

23 Q       Okay. But was there a search warrant concurrent with his  
24 arrest?

25 A       No, sir.

EMERSON - CROSS

9

1 Q Okay. So agents didn't -- did agents during his arrest  
2 search his residence?

3 A Not that I know of. If they did, it would have been a  
4 consent search. But if -- if they did, nothing was recovered  
5 that I'm aware of.

6 Q Okay. So no drugs, no money, no firearms?

7 A Correct.

8 Q Okay. And it was at his sister's residence, correct?

9 A I don't know where exactly his arrest took place.

10 Q But it was -- it was -- it was a house.

11 A Yes, sir.

12 Q Okay.

13 (Pause in the proceeding.)

14 BY MR. MACIAS:

15 Q Do you have any evidence or are you aware of any  
16 communications with Mr. Somkongmany and Zumudio Mendoza?

17 A No, sir.

18 Q Okay. Do you have any -- are you -- do you know if  
19 Mr. Somkongmany has ever left -- left the United States?

20 A No, I'm not aware of.

21 Q Okay. Are you aware that -- are you aware of any  
22 violations of parole --

23 A No, sir.

24 Q -- by Mr. Somkongmany? Violations of probation by  
25 Mr. Somkongmany?

EMERSON - CROSS

10

1 A NO, sir.

2 Q Violations on bond by Mr. Somkongmany?

3 A No, sir.

4 Q Okay.

5 **(Pause in the proceeding.)**

6 **BY MR. MACIAS:**

7 Q Are you aware that of the -- of the whereabouts for  
8 Mr. Frichithavong, his co-Defendant?

9 A I believe he's in Laos.

10 Q Okay.

11 A Or in Vietnam.

12 Q And Mr. Zamudio Mendoza?

13 A In Michoacan, Mexico, Morelia, Mexico.

14 Q Okay.

15 **(Pause in the proceeding.)**

16 **BY MR. MACIAS:**

17 Q Were the five pills of fentanyl weighed and tested?

18 A Yes, sir. It was sent for laboratory testing and tested  
19 positive for fentanyl.

20 **(Pause in the proceeding.)**

21 **BY MR. MACIAS:**

22 Q So during this transaction, there's no evidence that  
23 Mr. Somkongmany was involved in the negotiation of any price  
24 for the fentanyl pills.

25 A Correct. No, sir.

EMERSON - CROSS

11

1 Q There's no evidence that he was --

2 (Pause in the proceeding.)

3 BY MR. MACIAS:

4 Q That he received any money himself out of this  
5 transaction.

6 A Correct. No, sir.

7 (Pause in the proceeding.)

8 MR. MACIAS: Just a -- must a minute, your Honor.

9 (Pause in the proceeding.)

10 MR. MACIAS: I'll pass the witness.

11 THE COURT: Mr. Cusick?

12 MR. CUSICK: I have no further questions, your Honor,  
13 in light of this Defendant.

14 THE COURT: Okay. Mr. Emerson, let me -- Agent  
15 Emerson, let me ask you a couple of questions.

16 One, other than this one transaction, that we're  
17 talking about in 2019, is this Defendant accused or alleged to  
18 have committed any other acts or actions in violation of law?

19 THE WITNESS: No, sir. It's just that one  
20 transaction.

21 THE COURT: Okay. And I'm sorry.

22 Is there -- the Pretrial Report, which I think I  
23 already said. If I didn't, it's Exhibit 1 in this hearing.

24 MR. CUSICK: Yes, sir.

25 THE WITNESS: Yes.

EMERSON - CROSS

12

1           **THE COURT:** Okay. It says,  
2           "According to Immigration records, the  
3           subject appears to have an outstanding  
4           warrant of removal pending with ICE."  
5           Is that an ICE detainer?

6           **MR. CUSICK:** Yes, your Honor.

7           **(Pause in the proceeding.)**

8           **THE COURT:** Okay.

9           **(Pause in the proceeding.)**

10          **THE COURT:** Okay. You may step down from the witness  
11 stand.

12          **THE WITNESS:** Thank you.

13          **THE COURT:** Thank you very much.

14          **THE WITNESS:** Yes, sir.

15          **(Witness steps down.)**

16          **THE COURT:** Anything further, Mr. Cusick?

17          **MR. CUSICK:** No, your Honor.

18          **THE COURT:** Mr. Macias?

19          **MR. MACIAS:** Your Honor, Mr. Somkongmany has a sister  
20 that he lives with. I would like -- I would -- I would love to  
21 proffer her information and her --

22          **THE COURT:** I would love for you to proffer it.

23          **MR. MACIAS:** Your Honor, I -- I attempted to, or I  
24 did, email and call Pretrial Services with her information.  
25 But apparently, they didn't get it in time.

1 I emailed, or I -- I left a phone message for Miss  
2 Delgado. And also left a text message with her this morning  
3 actually.

4 Maybe they could verify some of Mr. Somkongmany's  
5 information. But apparently that -- that didn't happen before  
6 today's hearing.

7 But she is a U.S. citizen. She has -- I spoke to her  
8 a few times, your Honor. When I say a few times, probably  
9 four.

10 She's a U.S. citizen. She has a valid Texas driver's  
11 license. She owns her home with her husband.  
12 Her -- her -- she has children and her mother that live with  
13 her. And that's where Mr. Somkongmany was living for the  
14 recent -- recent past while he -- while he was working.

15 As noted in the Pretrial Services Report, so she  
16 would, and I will -- I will offer that she has agreed to be a  
17 third-party custodian or guarantor should the Court allow  
18 Mr. Somkongmany to be free on bond, your Honor, or -- or -- or  
19 pretrial release I should say.

20 And that's what I would proffer on -- on that issue,  
21 your Honor. And I think the rest that -- the rest that I have  
22 is really argument.

23 **THE COURT:** Okay. Argument, Mr. Cusick.

24 **MR. CUSICK:** Your Honor, the Government's concern  
25 is -- the Court's well aware of, the offense he's alleged to

1 his involved with the conspiracy occurred during September,  
2 2019. So there's been a big gap in time.

3 And as Agent Emerson testified, there's no reason to  
4 believe there was any -- any flight in between then, or acts of  
5 violence, or anything like that, and no other involvement with  
6 the conspiracy.

7 The Government's most concerned about if he's in this  
8 country illegally and there's an ICE detainer, I didn't put on  
9 proof of it, but I can tell this Court, one of the Defendants  
10 released last Friday on an ICE detainer, agreed to a bond, and  
11 he was taken to Mexico and deported yesterday.

12 And my -- my asking for detention is more out of fear  
13 of another agency of our Government than I am of the Defendant.  
14 Because I have no control over what they do. And if that  
15 happens, I --

16 **THE COURT:** But can I --

17 **MR. CUSICK:** -- can't -- Government can't finish its  
18 case.

19 **THE COURT:** I hear you loud and clear. Loud and  
20 clear.

21 So what authority can I consider that?

22 (**Pause in the proceeding.**)

23 **THE COURT:** Start with you.

24 **MR. CUSICK:** I don't see why not, your Honor.

25 Because I've been before Magistrate Judges before in other

1 Divisions -- other parts of the District where an ICE detainer  
2 is pretty much there was -- there was detention honored, then  
3 there wasn't even a detention hearing.

4 But it's -- it depends on the court and the -- the  
5 perception of what that ICE detainer means, and what can  
6 happen, or doesn't happen.

7 **THE COURT:** Mr. Macias, what do you think?

8 **MR. MACIAS:** Sure, your Honor.

9 **THE COURT:** I understand what, you know, see well  
10 I -- I -- I might have been born at night. I wasn't born last  
11 night. I -- I totally see what's the issue here is.

12 So what --

13 **MR. MACIAS:** Your Honor, practically, I'll  
14 start -- I'll start this. Start it this way.

15 Mr. Somkongmany is a national of -- citizen of Laos,  
16 okay, southeast Asia. He -- his family fled during the -- the  
17 revolutionary war there and sought refuge here in the United  
18 States. He's been here since the '70's.

19 It is the United States and Laotian Government don't  
20 have a -- a very good relationship with each other.

21 **(Pause in the proceeding.)**

22 **MR. MACIAS:** Mr. -- and it's in -- it's in the  
23 report, Mr. Somkongmany had been -- does have an order of  
24 deportation. But Laos -- the Laotian Government won't accept  
25 them.

1                   So he is always -- he has been released on an  
2 immigration bond where you would have to report. And then  
3 after a certain, I think after six months, they just said that  
4 you didn't have to report anymore.

5                   So the -- the ICE DHS knows that he's here. And knows  
6 that he's -- knows he doesn't have permission to be here. So I  
7 don't think -- anecdotally, I represent a client in the Eastern  
8 District on a presumption case with an ICE detainer and  
9 he's -- he's out on bond.

10                  So the -- it -- it -- I don't think anecdote or fear  
11 can control or --

12                  **THE COURT:** Well so --

13                  **MR. MACIAS:** -- override the BRA.

14                  **THE COURT:** Agreed. But it sound  
15 like -- Mr. Cusick's position, as I understand it, and don't  
16 let me, I mean, I know you're not going to -- won't be afraid  
17 to tell me if I'm saying the wrong thing.

18                  He would say, I think what I'm hearing is, hey, his  
19 concern is that ICE is going to pick up your client, and sent  
20 him to Laos, and then we're not -- any conditions I impose is  
21 irrelevant, cause he's never going to be here in the courtroom.

22                  If you were assured, or you knew that ICE wasn't  
23 going to detain him, sounds like you say put him -- put him on  
24 some strict conditions to assure his appearance at trial.

25                  **MR. CUSICK:** Yes, your Honor.

1                   **MR. MACIAS:** Your Honor, but -- but I believe  
2 that -- that the BRA speaks to risk of voluntary flight.  
3 Mr. -- Mr. Somkongmany has no intention of leaving the United  
4 States or leaving the -- the jurisdiction of this Court or this  
5 District.

6                   **THE COURT:** I'm -- I'm -- I'm with you loud and  
7 clear. That's -- I'm not saying Mr. Cusick's -- I think  
8 Mr. Cusick and you are saying the same thing, right?

9                   Mr. Cusick isn't concerned about him voluntarily  
10 leaving. His concern is that ICE is going to pick him up  
11 and -- and -- and take him against -- against his will.

12                  **MR. MACIAS:** Well --

13                  **THE COURT:** We -- we -- we, for example, and this is  
14 actually this is I think the first time in six years this issue  
15 has ever come up with me.

16                  Cause most of the times what happens is, that if  
17 there is an ICE detainer, then I understand why, given that  
18 your understanding that Laos isn't going to take him back.

19                  Most of the time if you have someone who's here, been  
20 a long time, and you get an ICE detainer, they don't want the  
21 ICE detainer to go through. Cause they're worried they're  
22 going to get sent back to whatever country.

23                  **MR. MACIAS:** Sure.

24                  (**Pause in the proceeding.**)

25                  **MR. MACIAS:** But here we have a situation, Judge,

1 where the -- the -- the Government has to prove that he is a  
2 flight risk, a -- a voluntary flight risk. I -- besides having  
3 the detainer, it -- it -- and it's the Executive Branch of the  
4 Government.

5 I talked to Mr. -- Mr. Cusick, I believe they're on  
6 the same team. So if the concern is -- and, your Honor,  
7 anecdotally again, I've seen the DOJ make -- have agreements  
8 with ICE or DHS to keep people in the country when they're  
9 cooperating witnesses, to keep people in the country when  
10 they're material witnesses, to keep people in the country when  
11 they're confidential sources or informants.

12 If -- if -- if the fear really is that  
13 Mr. Somkongmany will be sent somewhere where they can't get  
14 back to him, I think that fear is easily alleviated by  
15 communicating with DHS.

16 **THE COURT:** The -- the reason I chuckle at that is,  
17 anecdotally --

18 **MR. MACIAS:** That sounds easy.

19 **THE COURT:** Anecdotally, in this case, the larger  
20 case, it -- if, you know, it's clear that we had one yesterday  
21 where an individual unbeknownst to Mr. Cusick and the  
22 Government, ICE -- well ICE put a detainer on after there was  
23 no detainer, no detainer, no detainer. And then all of a  
24 sudden, you know, as soon as a detention hearing was finished,  
25 there became a -- an ICE detainer.

1                   **MR. MACIAS:** And even the detainer itself, Judge, the  
2 I-247A, in its -- in its -- in its form it says that this  
3 detainer arises from DHS authorities and it should not impact  
4 decisions about the alien's bail, rehabilitation, parole,  
5 release, diversion, custody, classification, work quota,  
6 assignment, or other matters.

7                   So just -- and just because he has a detainer, and  
8 like I said, I have -- I don't -- I don't know that he has a  
9 detainer, but I'm assuming. That can't be enough  
10 to -- that's -- that -- the Government doesn't meet its burden  
11 just because okay we have an ICE detainer. So he's -- he's a  
12 flight risk.

13                  That's not -- that can't be the law. Otherwise,  
14 alien admissibility, or reentry cases would be a presumption  
15 case. This is presumption case because of the -- the -- that  
16 matters involved, the drugs involved, not because of his status  
17 in the country. Okay?

18                  The -- the evidence is there's no evidence that he's  
19 never been -- not come to court. There's no evidence that he's  
20 ever violated parole, probation. There's nothing here, your  
21 Honor, that would suggest that he's a voluntary flight risk.  
22 And that's what the BRA contemplates, voluntary fleeing.

23                  Now, like I said, practically, if -- and I don't know  
24 what country the man was that was deported from, I'm  
25 assuming -- I'm assuming Mexico just based on the names.

1                   **THE COURT:** That's Mexico.

2                   **MR. MACIAS:** I think that's different than the  
3 situation where we have here, your Honor, where he's a Laotian  
4 national and they're just not accepting him.

5                   He's got -- he's got it as clear from the PS -- PTR  
6 report. He's got a felony conviction, and so Laos isn't going  
7 to take him back. And plus he's a refugee from his own  
8 government, your Honor.

9                   That things haven't changed since he left.  
10 They -- they still suffer the same problems that they had when  
11 his family fled.

12                  (**Pause in the proceeding.**)

13                  **MR. MACIAS:** His two -- his criminal history  
14 is -- well we're talking about risk right now, the flight risk.

15                  I don't -- I don't -- I just don't think that that's  
16 enough to keep him here, your Honor.

17                  The -- the other option is well, I just don't think  
18 that one branch of the -- one section of the Executive Branch  
19 saying we don't know what another part of the Executive Branch  
20 is going to do, so we should keep him and -- we should keep him  
21 detained just to be safe.

22                  I think that just goes against what everything that  
23 the BRA stands for, your Honor. And what -- first and foremost  
24 is that everyone should be released.

25                  (**Pause in the proceeding.**)

1                   **THE COURT:** Any thoughts, Mr. Cusick?

2                   **MR. CUSICK:** No, your Honor. I'm -- of course,  
3 defense -- every defense attorney is going to say everybody  
4 ought to be released. But that's why the law exists. That's  
5 why we have detention hearings, cause there's some that  
6 shouldn't be released.

7                   The fact of the matter is, I've prosecuted Defendants  
8 before, I guess, have against a similar, or an analogy of this  
9 would be from Cuba.

10                  They won't take -- we can't remove or deport people  
11 to Cuba. So they have Defendants that, while they're here  
12 illegally, and there may have been a detainer, DHS knows they  
13 can't deport them. They won't be accepted.

14                  I mean, aside from this detainer --

15                  **THE COURT:** Wait. Say that example again, I missed  
16 it. I'm sorry.

17                  **MR. CUSICK:** From Cuba.

18                  Had Defendants where they're deemed they're here and  
19 they've entered illegally. There's a detainer on them, but  
20 Cuba won't take them back. And so it turns out that ERO or  
21 DHS, they're not going to hold the Defendant because they know  
22 they can't remove or deport them, and then be in detention  
23 indefinitely.

24                  And in those cases, those Defendants on their own,  
25 what happened in the United States, were either detained or

1 released on bond. Too, my argument is kind of two-fold, I  
2 guess.

3 This Defendant, I'm more fearful that ICE is going to  
4 act on a detainer and then do something to take him out of our  
5 jurisdiction. But at the same time, he's facing a ten to life  
6 maximum potential punishment on the conspiracy count and then  
7 also the -- the substantive counts that he's charged with.

8 So the presumption, and the Government believes that  
9 he is a danger to the community. You know, the person he's  
10 with making the deliveries is from Laos also. And now where is  
11 he? He's back in Laos. I'm sure if he were here, he would say  
12 I was not going to leave.

13 So the -- the Government just feels that if he's  
14 released, there's -- there's too many ways that he -- he can  
15 disappear from the jurisdiction. And he would -- he would not  
16 say it was voluntary.

17 But nonetheless, if he just acquiesces and -- and ICE  
18 acting on a detainer and removing him somewhere, we can't  
19 proceed with the case against him.

20 **(Pause in the proceeding.)**

21 **THE COURT:** Hmmm.

22 **(Pause in the proceeding.)**

23 **MR. CUSICK:** And -- and this, to the nuance of it,  
24 he's technically in the -- the custody of the U.S. Marshal  
25 Service. And it's the relinquishment of custody from the

1 Marshal Service over to DHS if he's released on bond. That  
2 then they're free to do whatever they want to. They can't do  
3 it if he's in custody. And if --

4           **MR. MACIAS:** Your Honor, there's a provision in the  
5 BRA that -- that covers this situation.

6           If -- if the concern really is he's going to be  
7 deported.

8           **THE COURT:** By the way, you're the first person ever  
9 that I've heard refer to it as BRA.

10          **MR. MACIAS:** I'm sorry, Judge.

11          **THE COURT:** No, no, no, no. It's actually  
12 interesting. I'm thinking here, it is the Bail Reform Act. I  
13 don't know why -- I don't know why everyone refers it to Bail  
14 Reform Act. I've never heard anyone say BRA.

15          **MR. MACIAS:** I've used that way too long --

16          **THE COURT:** No. No need to apologize.

17          **MR. MACIAS:** -- I guess.

18          **THE COURT:** More people should.

19          Help me on what provisions. And --

20          **MR. MACIAS:** It's --

21          **THE COURT:** That's what I'm just grappling with.  
22 Cause I -- I got to be honest. I'm sympathetic to Mr. Cusick's  
23 position, but I'm -- you're making a good -- you're making a  
24 damn good argument.

25          **MR. MACIAS:** Well, Judge, (d), 3142(d), "Temporary

1 Detention to Permit Revocation of Conditional Release,  
2 Deportation, or Exclusion."

3 So it allows a ten-day period to see if they're going  
4 to do anything. And if they don't do anything, then he -- the  
5 fallback is, okay, now he's not under that rule. So we can  
6 treat him just like any other person dealing with 3142 issue.

7 It says on Part II.

8 **THE COURT:** Hold on.

9 **MR. MACIAS:** Okay.

10 (**Pause in the proceeding.**)

11 **MR. MACIAS:** I'm sorry. D(e) (1).

12 **THE COURT:** Let me see if I -- if I put in BRA  
13 3142(d) if that will come up.

14 **MR. MACIAS:** It's 18 U.S.C. 3142.

15 **THE COURT:** Whoa, I just did that. That is  
16 now -- that is not what you want to put in. That is not what  
17 you want to put in let me just say that.

18 (**Laughter.**)

19 **THE COURT:** That was not -- that -- don't do that.

20 (**Pause in the proceeding.**)

21 **THE COURT:** Caught me off guard.

22 (**Pause in the proceeding.**)

23 **MR. MACIAS:** To be precise, your Honor, it's  
24 3142(b) (1) (B) and it -- it goes into (2).

25 (**Pause in the proceeding.**)

1           **THE COURT:** Do you see that?

2           **MR. MACIAS:** Thank you.

3           **THE COURT:** No, no. Not -- not that.

4           **MR. MACIAS:** I --

5           **THE COURT:** Not, I'm sorry. Not did you do the  
6 Google search. Did you take a look at the provision  
7 3142(d)(2).

8           **MR. CUSICK:** No, your Honor. If I could look on --

9           **THE COURT:** Yeah. Absolutely.

10          (**Pause in the proceeding.**)

11          (**Voices speaking off the record.**)

12          **THE COURT:** Take your time. I think that's going to  
13 resolve this issue, actually. But maybe I'm wrong.

14          **MR. MACIAS:** And -- and that's what I've been  
15 suggesting, your Honor.

16          The DOJ division of the Executive Branch can inform  
17 the DHS Division of the Executive Branch that they have this  
18 issue. And --

19          **MR. CUSICK:** It's similar to the ten day hold lock  
20 times for parole violation warrant that would happen during the  
21 state, your Honor.

22          My fear is that this is what happened on our case  
23 yesterday. The person's released on bond, goes back to the  
24 cell block. And then viola, ICE calls, does an interview, and  
25 then a detainer appears. And for the one last week, there

1 wasn't and then all of a sudden then the Defendant appears.

2 I mean, if there's a ten-day temporary hold, I'm  
3 not -- I wouldn't -- I wouldn't alert ICE because I think that  
4 would just prompt them to -- to try to take some action on it.

5 So, I mean, I'll defer. What Mr. Macias' argument is  
6 well laid, and what the Court decides on it. But I'm  
7 just -- I'm just putting out there that --

8 **MR. MACIAS:** And -- and I ran into this issue on the  
9 state side very recently, Judge, within the past two weeks.

10 I had a client that was charged with possession of  
11 over five -- or five kilos of methamphetamine on the state  
12 side. That's a 15 to life case. He had an ICE detainer.

13 I got -- the case was dismissed. And so he still had  
14 a ICE detainer. So then right, within four -- within  
15 two -- within two days ICE picked him up from the Harris County  
16 Jail and took him over to Joe Corley, next door to Joe Corley,  
17 on HigBig (phonetic), which is their Montgomery County  
18 processing Center.

19 He was there another week before he went anywhere.  
20 He already had a order of deportation. There was no -- there  
21 was do not pass go, you don't get your 200 bucks. You -- you  
22 already have an order of deportation. You don't get to go in  
23 front of the Judge again. You just wait for the next plane to  
24 get out of here.

25 So in this case, and I don't know about the gentleman

1 from last week, he's probably still over at HigBig. And so if  
2 the provision says, such a person --

3           **THE COURT:** Well, it's neither here nor there. But  
4 actually, what happened to the other one was, that the defense  
5 lawyer was of the view, whoa, whoa, I'm worried that if the  
6 person is released from custody, they are going to be deported.  
7 They didn't want to be deported.

8           So there, you know -- that's the -- that other case  
9 is neither here nor there today.

10          **MR. MACIAS:** That -- Mr. Somkongmany does not want to  
11 be deported, your Honor.

12          **THE COURT:** Right. Right. Right. So -- so -- so  
13 you would say I utilize this procedure --

14          **MR. MACIAS:** Well not necessarily, your Honor.  
15 Because the and between (1) (B) and (2) is "and such person may  
16 flee or pose a danger to any other person."

17          Again, Mr. Somkongmany isn't fleeing voluntarily.  
18 He's not fleeing involuntarily. Because an involuntary fleeing  
19 is not fleeing. It's -- it's whatever happens with -- with  
20 ICE.

21          So I don't think he deserves -- I think he deserves  
22 bond today, your Honor.

23          **THE COURT:** So your suggestion is I let him out  
24 today. And I make his sister the third-party custodian.

25          **MR. MACIAS:** Yes, your Honor.

1                   **THE COURT:** Well where is she?

2                   **MR. MACIAS:** She is at work, your Honor. She  
3 couldn't be here today. But she could certainly come and speak  
4 with Pretrial Services. I tried to connect them, but  
5 apparently the connection didn't go through.

6                   She speaks English. She's a USC with a driver's  
7 license and reliable transportation. Mr. Somkongmany works at  
8 Hartz. He's -- he's able to abide by any conditions you  
9 would -- you would put on him, your Honor.

10                  (**Pause in the proceeding.**)

11                  **THE COURT:** Just -- the -- the sister's name is in  
12 the Pretrial Report, right? Bounwat Jaelo --

13                  **MR. MACIAS:** Yes.

14                  **THE COURT:** -- Somkongmany.

15                  **MR. MACIAS:** They just didn't have the phone number.  
16 I've got the phone number. And I've -- I've communicated that  
17 to Pretrial.

18                  (**Pause in the proceeding.**)

19                  **THE COURT:** Let's take a two minute break. Two  
20 minutes. I just want to talk to my crack staff over here. Two  
21 minutes and we'll be right back.

22                  **UNITED STATES MARSHAL:** All rise.

23                  (**Recess taken from 01:23 p.m. to 01:30 p.m.**)

24                  **UNITED STATES MARSHAL:** All rise.

25                  (**Pause in the proceeding.**)

1                   **THE COURT:** Please be seated.

2                   So, Mr. Macias, let me ask you, 3142(d)(2). So the  
3 way that works is if I find that a person may flee or pose a  
4 danger, then I can order that they be held temporarily for ten  
5 days, make the Government let ICE know. And then, I guess, if  
6 the Government -- if -- if ICE says yes, we're going to deport  
7 them.

8                   **MR. MACIAS:** Well, but then the -- then the -- then  
9 the Executive Branch has a choice. Do they want to prioritize  
10 his deportation?

11                  If they want to prioritize his deportation, they  
12 dismiss the indictment, and he gets sent wherever he wants to  
13 go.

14                  If they -- they don't want to -- if they don't want  
15 to prioritize his deportation, I'm -- I'm -- I'm assuming --

16                  **THE COURT:** Well wait, wait, wait. But the -- but it  
17 says,

18                  "If the official fails or declines to take  
19 such person into custody during that  
20 period, such person shall be treated in  
21 accordance with the other provisions of  
22 this section."

23                  (**Pause in the proceeding.**)

24                  **THE COURT:** Meaning --

25                  (**Pause in the proceeding.**)

1                   **THE COURT:** I guess my question is, does that mean  
2 that if I find he could flee or pose a danger, I can give him  
3 the ten days. And then I could still find that there are  
4 conditions, or combination of conditions?

5                   **MR. MACIAS:** Well -- well, I -- I -- that seems  
6 counter-intuitive, your Honor. Because if you -- if you find  
7 that he's a flight risk -- if you -- if you found that beyond  
8 the -- the preponderance, then to -- to trigger the ten days,  
9 and if they don't pick him up, I --

10                  **THE COURT:** But there's a difference -- there's a  
11 difference whether you think, right, the -- detention isn't  
12 whether I think he may flee or whether he's a danger. It's  
13 whether or not there are any conditions, or combination of  
14 conditions, that I could impose to alleviate the threat.

15                  **MR. MACIAS:** Okay.

16                  **THE COURT:** Okay. Here's what I want to do.

17                  (**Pause in the proceeding.**)

18                  **MR. MACIAS:** Cause I don't -- I'm sorry, your Honor.  
19 I feel like I have to say it.

20                  I don't want you to say that he's a flight risk.

21                  **THE COURT:** I understand.

22                  **MR. MACIAS:** Then we come back and say --

23                  **THE COURT:** I -- I -- I totally understand.

24 I -- I'm -- I'm on board with both of your positions. And I  
25 sympathize and understand. I -- I'm -- I'm with you.

1           Here's what I want to do. Number one, if I'm going  
2 to make a third-party custodian --

3           **MR. MACIAS:** Okay.

4           **THE COURT** -- they have got to be here --

5           **MR. MACIAS:** Sure.

6           **THE COURT:** -- in front of me. Either -- well, they  
7 got to be here cause they got to sign the paperwork.

8           So my thought right now is, I think you persuaded me.  
9 I want to go back and look, to be honest, to the case law, make  
10 sure I understand. And I'm sort of -- I'm not sure, it's  
11 neither here nor there. But I'm curious as to whether or not  
12 Laos will accept the ICE detainer. I'm curious  
13 what -- my -- my gut. I have a funny feeling what I know what  
14 the law's going to be and whether I consider the mere fact the  
15 ICE detainer alone.

16           But I just want to go take a look at it. When can  
17 she be here?

18           **MR. MACIAS:** I --

19           **THE COURT:** I guess, my --

20           **MR. MACIAS:** I'll talk to her today. I can get her  
21 tomorrow or -- or Friday.

22           (**Pause in the proceeding.**)

23           **THE COURT:** Let me look at our calendar.

24           (**Pause in the proceeding.**)

25           **MR. MACIAS:** And she's helped him with his -- because

1 of his -- his unique, I don't want to say unique, cause there's  
2 a lot of -- there's a lot of people in the Southeast Asian  
3 community that suffer the same.

4 She's helped him get his driver's license, and things  
5 of that nature. So she --

6 **THE COURT:** We --

7 **MR. MACIAS:** She understands him.

8 **THE COURT:** We've got a couple of detention hearings  
9 this case this afternoon. Is that it? We don't have any  
10 other?

11 **MR. CUSICK:** Everybody else that's inbound from other  
12 places, McAllen, Brownsville --

13 **THE COURT:** Are next week.

14 **MR. CUSICK:** Bond have already been set.

15 **THE COURT:** Oh, okay.

16 **MR. CUSICK:** They're just coming in for arraignments.

17 **THE COURT:** I was just looking at Thursday or Friday  
18 of this week. I was like, I don't believe we -- we don't have  
19 any more.

20 (**Pause in the proceeding.**)

21 **THE COURT:** You want to take a minute and just see  
22 when he's available?

23 **MR. MACIAS:** Sure, I -- I'll step out and call her  
24 right real quick.

25 **THE COURT:** Yeah. Any time Thursday or Friday,

1 whatever. I want to make sure she's here, cause I want to  
2 basically explain to her what the job of a third-party  
3 custodian is, make sure she understands, have her sign the  
4 paperwork. And the in the meantime, that gives me just a  
5 chance to sort of confirm everything we've talked about.

6 **MR. MACIAS:** Okay.

7 **THE COURT:** Unless something changes with my  
8 research. That's what I'm going to do.

9 **MR. MACIAS:** Your Honor, I will be comfortable right  
10 now saying two o'clock is going to work. I don't know if  
11 that's too late, or if you want to do it in the morning.

12 **THE COURT:** I'll do it when -- I literally want to  
13 make sure -- Mr. Cusick can participate if he wants in person  
14 or we can do it on Zoom with you. So however you want to do  
15 it.

16 I -- I just want to make she -- I don't want to set a  
17 time and then she can't be here.

18 **MR. MACIAS:** Well if I -- I'll step out and call her  
19 real quick, your Honor.

20 **THE COURT:** I will stay on the bench. We're off the  
21 record.

22 **MR. MACIAS:** Oh, thank, you Judge.

23 **(Recess taken from 01:35 p.m. to 1:40 p.m.)**

24 **MR. MACIAS:** She works at a manufacturing plant. So  
25 it may be too -- too loud for her to see you. Maybe she can't

1 have her phone on.

2           **THE COURT:** Let's do this. How about we say two  
3 o'clock tomorrow. Wait.

4           **(Pause in the proceeding.)**

5           **(Voices speaking off the record.)**

6           **THE COURT:** We're going to be out in the afternoon.  
7 We can do tomorrow morning or any time on Friday.

8           **(Pause in the proceeding.)**

9           **MR. MACIAS:** Any time on Friday, your Honor.

10          **(Pause in the proceeding.)**

11          **MR. MACIAS:** That'll give her time to give her job  
12 notice.

13          **THE COURT:** Okay. You -- you tell me. I'm  
14 accommodating.

15          **MR. MACIAS:** Friday at 11.

16          **THE COURT:** That won't work. Yes, that works.

17          **(Laughter.)**

18          **THE COURT:** Any time. Eleven. No, your Honor.

19          Yes. Okay. So let me just make sure we --

20          **(Pause in the proceeding.)**

21          **THE COURT:** Okay. So here's our plan.

22          We're going to have her here at 11 a.m. So I'm going  
23 to order the -- basically going to continue this detention  
24 hearing until Friday morning at 11.

25          Mr. Cusick, if you want to get on Zoom, just let

1 Mr. Castro know. We'll set --

2 **MR. CUSICK:** Yes, I'd like to, your Honor.

3 I notice we have a counsel determination hearing at 9

4 on Margarito Ruiz, or has that been re --

5 **(Pause in the proceeding.)**

6 **MR. MACIAS:** Oh, this is her calling me back, your  
7 Honor. May I step out?

8 **THE COURT:** You bet.

9 **(Counsel steps out to take telephone call.)**

10 **(Pause in the proceeding.)**

11 **THE COURT:** I don't have anything on nine.

12 Oh that was, we were --

13 **MR. CUSICK:** I think we --

14 **THE COURT:** -- they -- they --

15 **MR. CUSICK:** -- moved it to Monday, your Honor?

16 **THE COURT:** Yeah. Yeah.

17 **MR. CUSICK:** Monday at nine. Okay. I'm sorry.

18 **THE COURT:** Yeah. Yeah.

19 **(Pause in the proceeding.)**

20 **(Voices whispering.)**

21 **THE COURT:** We are back on the record. Let the  
22 record reflect that Mr. Macias is walking back into the  
23 courtroom.

24 **MR. MACIAS:** Friday at 11 will be perfect, your  
25 Honor. Thank you.

1                   **THE COURT:** Okay. So just we're all on the same  
2 page. I will remand the Defendant to the custody of the United  
3 States Marshals for continuation of this detention hearing  
4 Friday at 11 a.m.

5                   In the meantime, I'm going to take a look at the law  
6 just to make sure I'm -- really just cause I haven't had enough  
7 involvement, just to make sure I'm -- I'm confident.

8                   My expectation is that what will happen at 11 a.m. is  
9 that I will go over terms of release and make sure that his  
10 sister fully understands, appreciates the obligation of being a  
11 third-party custodian.

12                  I guess I do need to make sure the Pretrial Services  
13 reaches out to her and talks to her before then.

14                  **PRETRIAL SERVICES OFFICER:** Yes, your Honor.

15                  **THE COURT:** And you -- you've given Pretrial the  
16 number?

17                  **MR. MACIAS:** Well I give it to her right now. Yes,  
18 your Honor.

19                  **THE COURT:** Okay. Perfect.

20                  **MR. CUSICK:** And if I could appear by video, I'd  
21 appreciate that, your Honor.

22                  **THE COURT:** Let me think about it.

23                  (**Pause in the proceeding.**)

24                  **THE COURT:** Granted.

25                  **MR. MACIAS:** And -- and will Mr. Somkongmany will be

1 brought here, your Honor?

2           **THE COURT:** Yes. In fact --

3           **(Pause in the proceeding.)**

4           **THE COURT:** Is he at joe --

5           **UNITED STATES MARSHAL:** He's at Joe Corley, your  
6 Honor.

7           **THE COURT:** Joe Corely.

8           **UNITED STATES MARSHAL:** Yes.

9           **THE COURT:** So how do we bring him in?

10          **UNITED STATES MARSHAL:** We'll bring him all the way  
11 out.

12          **THE COURT:** All the way out. Okay. Okay. So then  
13 he could be --

14          **UNITED STATES MARSHAL:** And so he'll be -- he'll be  
15 ready.

16          **THE COURT:** Assuming I -- assuming I -- I give him  
17 conditions, he could leave from here --

18          **UNITED STATES MARSHAL:** Correct.

19          **THE COURT:** -- as opposed to having him --

20          **UNITED STATES MARSHAL:** Yes.

21          **THE COURT:** Okay. Let's make sure that's there. So  
22 to the extent he's released on Friday, it'll be from here.

23          **MR. MACIAS:** Thank you, your Honor.

24          **THE COURT:** Thank you very much.

25          Anything else we need to address?

1 MR. CUSICK: Not on this case, your Honor.

2                   **THE COURT:** Okay. I appreciate it. You're all  
3 excused. We're off the record. Thanks.

4 (This proceeding was adjourned at 01:45 p.m.)

5

6 || \* \* \* \* \*

7

8

## CERTIFICATION

10 I certify that the foregoing is a correct transcript from the  
11 electronic sound recording of the proceedings in the above-  
12 entitled matter.

13

14

/s/ Cheryl L. Battaglia

April 12, 2024

15

16

## Transcriber

Date

16

17

17 || 04/03/24 = 04/12/24

For more information about the study, please contact Dr. Michael J. Hwang at (319) 356-4000 or email at [mhwang@uiowa.edu](mailto:mhwang@uiowa.edu).